

**LYNCHBURG CITY COUNCIL
Agenda Item Summary**

MEETING DATE: **July 13, 2004**

AGENDA ITEM NO.: 13

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Conditional Use Permit (CUP) – Palmer Woods, PUD, 101 Palmer Drive**

RECOMMENDATION: Denial of the requested Conditional Use Permit.

SUMMARY: Thomas Brooks is petitioning for a CUP to allow a planned unit development at 101 Palmer Drive with eighteen (18) lots in an R-1, Single-Family Residential District. The Planning Commission recommended denial of the CUP because:

- The petition proposes lot sizes ranging in size from 6,882 square feet to 11,325 square feet while the standard lot size in an R-1, Single-Family Residential District is 15,000 square feet. The reduced lot size would create densities that are out of character with the area.

PRIOR ACTION(S):

June 9, 2004: Planning Division recommended approval of the CUP with the following conditions:

1. The property will be developed in substantial compliance with the site plan prepared by ACRES of Virginia, Inc. dated May 17, 2004.
2. The buildings will meet all building code requirements as determined by the Inspections Division.
3. The interior streets will be constructed to City of Lynchburg standards, as determined by the City Traffic Engineer.
4. Common areas shown on the site plan shall remain undisturbed, except for construction of a trail through the common area around the perimeter of the development. The trail shall be designed so as not to disturb any mature trees.

Planning Commission recommended denial 6-0 (with 1 member absent) of the CUP.

FISCAL IMPACT: N/A

CONTACT(S):

Rachel Flynn / 455-3902

Tom Martin / 455-3909

ATTACHMENT(S):

- Resolution
- PC Report
- PC minutes
- Vicinity Zoning Pattern
- Vicinity Land Use
- Site plans
- Speaker Sign Up Sheet

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REVIEWED BY: lkp

RESOLUTION A

A RESOLUTION DENYING A REQUEST FOR A CONDITIONAL USE PERMIT TO DONALD C. RAPP, INC. FOR A PLANNED UNIT DEVELOPMENT (PUD).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG That the petition of Donald C. Rapp, Inc. for a Conditional Use Permit for use of the property at 101 Palmer Drive for a development as a Planned Unit Development is hereby denied.

Adopted:

Certified:

Clerk of Council

091L

RESOLUTION B

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO DONALD C. RAPP, INC. FOR USE OF THE PROPERTY AT 101 PALMER DRIVE TO DEVELOP A PLANNED UNIT DEVELOPMENT (PUD).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG That the petition of Donald C. Rapp, Inc. for a Conditional Use Permit for use of the property at 101 Palmer Drive for development as a Planned Unit Development as an 18 unit subdivision of single family homes with a common area be, and the same is hereby, approved, subject to the following conditions as recommended by the Planning staff:

1. The property will be developed in substantial compliance with the site plan prepared by ACRES of Virginia, Inc. dated May 17, 2004.
2. The buildings will meet all building code requirements as determined by the Inspections Division.
3. The interior streets will be constructed to City of Lynchburg standards, as determined by the City Traffic Engineer.
4. Common areas shown on the site plan shall remain undisturbed, except for construction of a trail through the common area around the perimeter of the development. The trail shall be designed so as not to disturb any mature trees.

Adopted:

Certified:

Clerk of Council

091L

To: Planning Commission
From: Planning Division
Date: June 9, 2004
Re: **CONDITIONAL USE PERMIT (CUP): for Palmer Woods, a Planned Unit Development (PUD) by Thomas Brooks, Sr., at 101 Palmer Drive**

I. PETITIONER

Thomas Brooks, Sr., Acres of Virginia, Inc., 404 Clay Street, Lynchburg, VA 25404
Representative: Thomas Brooks, Sr., 404 Clay Street, Lynchburg, VA 24504

II. LOCATION

The subject property is a tract of about 5.820 acres located at 101 Palmer Drive.
Property Owners: Donald C. Rapp, Inc., 1820 Old Forest Rd., Lynchburg, VA 24501

III. PURPOSE

The purpose of this petition is to allow a Planned Unit Development (PUD) at 101 Palmer Drive. The PUD will be an 18-unit subdivision of single-family homes with a common area.

IV. SUMMARY

- Petition agrees with the Comprehensive Plan which recommends Low Density Residential land uses in this area.
- Petition agrees with the Zoning Ordinance in that the property is zoned R-1, Single-Family Residential.
- Petition proposes the use of the property as a PUD, including 18 single-family homes and common areas.

The Planning Division recommends approval of the CUP petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends Low Density Residential land uses throughout this area. The proposed Planned Unit Development will support this land use designation.
2. **Zoning.** The subject property was annexed into the City in 1976. The existing R-1, Single-Family Residential zoning was established in 1978 with the adoption of the current *Zoning Ordinance*.
3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed residential subdivision.
4. **Surrounding Area.** There has been one item requiring City Council approval in the immediate area:
 - 11/11/1997: City Council approved a CUP for a master development plan to allow construction of a church and related facilities in the 600 block of Leesville Road.
5. **Site Description.** The subject property is bounded to the north, south, east and west by single-family residential uses.
6. **Proposed Use of Property.** The purpose of the CUP is to allow construction of an 18-unit residential subdivision in the form of a Planned Unit Development (PUD).
7. **Traffic and Parking.** The City Traffic Engineer has no comments of concern regarding the subject petition. The proposed use is not expected to generate a significant amount of traffic.
8. **Storm Water Management.** Development of the subject property will result in an increase in impervious area. Floc logs will be used in the diversion ditches below the check dams to treat the stormwater for quality. The stormwater from this project will be channeled into an existing creek shown on the west side of

the project. A determination has been made through field observations and preliminary calculations that the creek is adequate to handle additional runoff from this project.

9. **Impact.** The owner of the subject property wishes to develop it as a subdivision of single-family homes, similar to other subdivisions in the immediate area. The PUD allows the homes to be clustered on smaller lots than would normally be permitted in an R-1 zoning district. Provision of smaller lots allows for common areas to remain undisturbed. Completion of the subdivision will benefit the surrounding neighborhood by providing market-rate homes and eliminating one spot that has been subject to illegal dumping of construction and other materials.
 10. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on March 23, 2004. At that time, the applicant had submitted a petition to rezone the subject property. The Planning Division recommended that the subdivision be developed in the form of a PUD and that, instead of applying to rezone the property, the applicant petition for a CUP to allow the PUD. The applicant has complied with this request. The City Traffic Engineer has requested that plans for the roadway be submitted and reviewed separately from the Technical Review Committee (TRC) process, so the Traffic Engineer's comments are not included here. Other comments related to the proposed use were minor in nature and have or will be addressed by the developer prior to final site plan approval.
 11. **Conditions.** According to Section 35.1-15 (f) of the Zoning Ordinance, the Planning Commission or City Council may impose any conditions deemed necessary or appropriate in approving a CUP.
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VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to the City Council approval of the petition of Thomas Brooks, Sr., for a conditional use permit at 101 Palmer Drive to allow construction of a PUD, including an 18-unit residential subdivision with common areas subject to the following conditions:

1. **The property will be developed in substantial compliance with the site plan prepared by Acres of Virginia, Inc. dated May 17, 2004.**
2. **The buildings will meet all building code requirements as determined by the Inspections Division.**
3. **The interior streets will be constructed to City of Lynchburg standards, as determined by the City Traffic Engineer.**
4. **Common areas shown on the site plan will remain undisturbed, except for construction of a trail through the common area around the perimeter of the development. The trail shall be designed so as not to disturb any mature trees.**

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas Dejarnette, Fire Marshal
Ms. Judith C. Wiegand, AICP, Senior Planner
Mr. J. Lee Newland, Director of Engineering
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official

Mr. Kent White, Environmental Planner
Mr. Thomas Brooks, Sr., Petitioner/Representative

VII. ATTACHMENTS

1. Vicinity Zoning Pattern

(see attached map)

2. Vicinity Proposed Land Use

(see attached map)

3. Site Plan

(see attached site plans)

MINUTES FROM THE JUNE 9, 2004 PLANNING COMMISSION MEETING

The minutes have been reviewed but not approved by the Commission

Petition of Thomas Brooks, Sr. for a Conditional Use Permit, to allow a Planned Unit Development at 101 Palmer Drive in an R-1, Single-Family Residential District.

Mr. Martin explained that the current zoning of the site would allow the construction of 12 single-family homes on the property as a by-right use. He said the petitioner was proposing slightly smaller lot sizes and construction of a total of 18 single-family homes. He added that there would be a common area along the rear of the properties with a walking trail for use by the residents. He said the undisturbed buffer area would also serve as a buffer between the development and Brookville Village and Vista Acres subdivisions that were adjacent to this site. Mr. Martin explained to the Commission that the project as proposed was in compliance with the definition of a Planned Unit Development as described in the Zoning Ordinance. He added that the project was also in compliance with the Future Land Use Map, which identified the area for low-density residential uses. He said the Planning Division was recommending approval of the petition. Mr. Martin told the Commissioners that this petition was only to approve the smaller lot size and the common areas. He said the petitioner would have to come back to the Commission and Council to have the street name approved and accept the dedication of the street.

Mr. Thomas Brooks, Sr., ACRES of Virginia, Inc., represented Mr. Donald C. Rapp in this request. Mr. Brooks explained that there would be eighteen lots with single-family homes for sale. He added that there would be a common area open to all residents and a walking trail through that common area. He explained that Palmer Drive would be constructed to meet City standards and would be turned over to the City as a public street. Mr. Brooks noted that the site would be served by City water and sewer. He said several years ago Palmer Drive was graded to within approximately 150 feet of the cul-de-sac but was never completed. He continued by saying that Mr. Rapp purchased the property with the intent to develop the site as a single-family subdivision with homes ranging in price between \$135,000 and approximately \$175,000. He said the owner would have an architectural review committee look over the plans prior to building the homes to ensure that the homes met the criteria of the homeowners and the agreement. Mr. Brooks explained that to date they had road, water and sewer, and erosion and stormwater management plans about 95% complete on this project. He said if the Commission and City Council granted approval of the PUD, then the engineering plans would be submitted for review and approval. Mr. Brooks noted that they had submitted all of the information that the Planning Department had requested and had worked with the staff on this project.

Mr. William Stokes, 1308 Grove Road, said he had lived in the neighborhood for fifteen years and was concerned about increased traffic in the neighborhood and the small size of the lots. He added that the poor topography of the site would require lots of fill in order to make the area buildable. Seven of Mr. Stokes' neighbors stood in support of Mr. Stokes comments.

Ms. Denise Grindstaff, 1306 Grove Road, spoke in opposition to the petition. Ms. Grindstaff said her back yard was in the cul-de-sac portion of the site. She said she appreciated the buffer between her property and the proposed development, but was concerned that eighteen homes were planned to be constructed on such a small area of land. Ms. Grindstaff added that she was concerned about the value of their property decreasing. She said the existing houses in the area were older, brick homes, and to construct homes that look like manufactured homes would be in total contrast to what had been there for a very long time.

Mr. Brooks gave a rebuttal. He said there was a total of 5.818 acres at that site, which currently could be developed with 14 single-family homes. He noted that with the proposed smaller lot sizes it would give the people in the neighborhood a common area to use as well as a walking trail. He added that that common area was approximately 1.3 acres. Mr. Brooks said the PUD offered a little more protection to the individuals who already lived there, and added that these homes would be appealing to people who wanted less yard work. He told the Commissioners that tot lots could be added in the future if the homeowners chose to do so, and said that each home would have off-street parking.

Chair Dahlgren read comments from Commissioner Bacon, who was unable to attend the meeting. Commissioner Bacon asked if:

- Palmer Drive would have curb, gutter, and sidewalks;
- there would be street lights;

- there would be underground wiring.

Mr. Brooks answered Commissioner Bacon's questions by confirming that there would be curb and gutter, sidewalks, street lights, and all wiring would be underground.

A citizen asked how close the houses would be to the street.

Mr. Brooks said the houses would be 35 feet off the right-of-way line, which would be approximately 60 feet off the centerline of the street. He said there would be no fill on the site, and added that the homes would be constructed in the natural surrounding. He added that they would try to save all of the existing trees on the site, and noted that the homes on the sloped side would be constructed with basements.

Chair Dahlgren asked at what point the association would be turned over to the homeowners.

Mr. Brooks said he was not sure, but assumed the owner would wait until most of the houses were constructed before turning the association over to the homeowners.

Commissioner Flint asked if there would be an island in the cul-de-sac or would it all be paved.

Mr. Brooks said the cul-de-sac would be paved.

Mr. Martin said the cul-de-sac had to meet City specifications.

A citizen asked if the new development would devalue the existing homes in the area.

Mr. Brooks answered that appraisers looked at the comparables in the neighborhood. He said the proposed homes would begin in the price range of \$135,000.

The citizen said the proposed development would devalue the existing homes. He said his home was currently appraised at \$120,000.

Chair Dahlgren said he was having a hard time seeing that many homes on this site. He said the homes would be very close together and he would feel more comfortable with fewer homes on the site.

Commissioner Echols asked who would maintain the common areas.

Mr. Brooks said the homeowners association (HOA) would maintain the common area. He said the HOA would be approved by the City Planning Department and the City Attorney, and the fee would be assessed to each property owner.

Chair Dahlgren said he thought the petitioner was trying to put restrictions on what happened to the homes and what could be done on that street. When the homeowners association went into effect, he said, then the covenants would also go into effect and the homeowners would have to abide by them.

Commissioner Echols commented about the one means of ingress and egress, and asked how emergency vehicles would get into and out of the area. He asked what was considered a PUD.

Mr. Brooks said the property around the area was owned by neighbors, so there was no way to continue the street for a second means of ingress and egress. He told the Commission that a PUD was a planned neighborhood with amenities such as the walking trail and common area as shown in this plan.

Mr. Martin explained that a PUD under the City's ordinance would allow a mixture of residential uses such as town homes, apartments, and single-family residents. He said there was a requirement that there be at least 20 percent single family homes, and added that there was no restriction against constructing all single family homes. He added the Planning Department recommend approval for this project because this was a way to allow the clustering of the lots to get the greater densities while maintaining the buffer area between the proposed development and the existing development. Mr. Martin noted that in the City's Zoning Ordinance a Traditional Neighborhood Development would allow a mixture of residential and business uses.

Commissioner Hamilton asked if there would be an easement on the common area to block the HOA from constructing a recreation center or a swimming pool if in a few years the residents decided to do so.

Mr. Brooks said there were no easements on the common area.

Mr. Martin said if the homeowners wanted to construct something substantial in the common area they would have to come back through the system to get approval and amend the site plan.

Ms. Grindstaff said she was scared because they were painting a picture to get more needs met and approved. She said the property had not yet been developed because the area was too small to build 18 homes, and there would not actually be 5 acres of building lots due to the common area.

Mr. Donald Harris, 1312 Grove Road asked who was responsible for the upkeep of the common grounds if only a few lots were sold and developed.

Mr. Martin responded that before the request received final approval, the homeowners covenants and agreements would have to be reviewed by the City Attorney. He added that when the covenants were first established, the owner of the land maintained the largest interest in that association. He continued by saying that as the owner began selling lots, the owner's interest gradually declined. Mr. Martin explained that if six lots were sold, those six homeowners, as well as the person who owned by remainder of the land, would be responsible for the common area. As far as the street and public utilities, he said, they would be required to be bonded and built as part of the subdivision process.

Commission Echols asked the square foot area of lot 11 and the square foot of the house that would be constructed on that lot.

It was determined that the size of lot 11 would be less than 9,000 square feet.

Mr. Brooks said the houses proposed would be between 1,200 and 1,400 square feet.

Commissioner Echols said the house would take most of the lot and would not leave much yard for the homes.

Mr. Brooks said that was basically the point of a Planned Unit Development.

Commissioner Hamilton asked how a grievance would be handled if a homeowner did not mow their grass.

Mr. Brooks said the president of the HOA would be responsible for seeing that the grievances were taken care of, which would include lawn mowing as well as dealing with homeowners who defaulted on paying his or her dues.

Commissioner Echols asked about the radius of the cul-de-sac and how difficult it would be for a fire truck to turn around.

Mr. Brooks explained that the 60-foot radius was the standard for the City of Lynchburg and a fire truck would be able to turn around in the cul-de-sac.

Commissioner Flint asked Mr. Martin the minimum lot size for R-1 zoning.

Mr. Martin responded that the minimum lot size was 15,000 square feet.

Commissioner Flint said some of the proposed lots were less than half the size of existing lots in the surrounding neighborhood.

Chair Dahlgren said he found it extremely difficult to approve this petition based on the lot size.

Commissioner Hamilton commented that the lot sizes should be closer to at least half of what the City required.

Commissioner Echols added that the Commission had the health, safety, and welfare of the citizens to consider, and voiced his opposition to the petition.

Commissioner Flint said the proposed development should conform in style with the existing neighborhood, which it does not. He voiced his opposition to the petition.

After discussion, Commissioner Flint made the following motion, which was seconded by Commissioner Echols and was denied by the following vote:

“That the Planning Commission recommend denial to the City Council for the Petition of Thomas Brooks, Sr. for a Conditional Use Permit, to allow a Planned Unit Development at 101 Palmer Drive in an R-1, Single-Family Residential District.”

AYES:	Dahlgren, Echols, Flint, Hamilton, Pulliam, Worthington	6
NOES:		0
ABSTENTIONS:		0